THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (M/S) No.1329 of 2006

Ram Kumar Singh (Mixal Operator) S/o Shri Mangal Singh,
Resident of P.W.D. Store Campus, Rudrapur, District Udham Singh Nagar. …… **Petitioner.**

Versus

1. State of Uttaranchal through Collector, Udham Singh Nagar.
2. Executive Engineer, Public Works Department, Rudrapur, District Udham Singh Nagar.
3. Civil Judge (Senior Division), Udham Singh Nagar.

…… **Respondents.**

Sri V.D. Bisen, learned counsel for the petitioner.
Sri R.C. Arya, learned Standing Counsel for the respondents-State.

Dated September 11, 2006.

Hon'ble B.S. Verma, J.

Heard.

By means of this writ petition, the petitioner has sought quashing the judgment and order dated 22-8-2006 passed by the respondent no.3 (Annexure No.1 to the writ petition) in Civil Misc. Appeal No. 4 of 2004, filed by the State under Order 43, Rule 1(r) of the C.P.C. By the impugned order, the learned Civil Judge (Senior Division) Udham Singh Nagar has set aside the order passed by the Civil Judge (Junior Davison) in Civil Suit No.59 of 2003, Ram Kumar Singh Vs. State on temporary injunction application under Order 39, Rule 1 and 2 C.P.C., whereby the learned trial Judge restrained the respondents not to eject the petitioner by police force and not to interfere with the possession of the petitioner's house.

Learned counsel for both the parties agree that the writ petition may be disposed of finally today at the stage of admission.

The petitioner is a mixal operator in the Public Works Department, Rudrapur since 1979 and he was transferred to Kashipur, but he did not vacate the official house, which was in his (petitioner's) possession. A notice was sent by the Executive Engineer, Public Works Department, Rudrapur to him to vacate the house on 3-9-2003. Aggrieved by the said notice, the petitioner had filed the Civil Suit.

The learned counsel for the State contended that an employee may retain the government accommodation for a limited period after his transfer in view of the Fundamental Rule 45 Chapter I read with relevant provisions of Chapter IV of the Financial Hand Book, Volume II, Parts II to IV and therefore, now the petitioner has not right to retain the accommodation. He has to vacate the premises.

In the facts and circumstances of the case, the respondent would be at liberty to eject the petitioner by taking recourse of law as provided under the Public Premises Act **(Act No.22 of 1972)**. However, the petitioner shall not be evicted except due course of law. Accordingly, the order dated 22-8-2006 passed by respondent no. 3 is set aside and the order dated 19-12-2003 passed by the Civil Judge (Junior Division) Rudrapur is modified to the above extent.

The Civil Judge (Junior Division) Rudrapur is direction to decide the suit of the petitioner on merit expeditiously, within a period of four months from today.

With the above observations, the writ petition is disposed of finally.

11-09-2006 **(B.S. Verma, J.)**
RCP